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COUPA SOFTWARE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)

ARIBA, INC.,

Plaintiff/Counter-defendant

v.

COUPA SOFTWARE INC.,

Defendant/Counterclaimant

Case No. 4:12-cv-01484 WHO

**COUPA'S OPPOSITION TO ARIBA'S
MOTION FOR LEAVE TO FILE A
SUPPLEMENTAL BRIEF ON WHETHER
§ 112, ¶ 6 APPLIES TO "DECIDING
BETWEEN"**

Coupa opposes Ariba's administrative motion for leave to file a supplemental claim construction brief regarding the "deciding between" term.¹ Briefing on this issue closed over a month ago, and the Court already held the claim construction hearing. Ariba's new brief raises arguments that it could have made in its opening or reply briefs, but chose not to. Thus, its motion for leave is unjustified, and should be denied.

Ariba's new brief revisits the very issue the parties previously addressed – whether the "deciding between" limitation is subject to § 112(f). [*See, e.g.*, Dkt. No. 44 (Ariba's Opening Claim Construction Brief) at 7 ("The most fundamental dispute regarding this term is whether it is subject to 35 U.S.C. § 112, ¶ 6.").] There is nothing in that brief that Ariba could not have raised previously. Indeed, it appears that Ariba made a strategic decision to omit from its opening and reply briefs the arguments it now wishes to present. Nothing in Ariba's request differs from any other request in which parties simply wish to continue arguing after a hearing depending on how it goes, and will only encourage future litigants in this Court to do the same.

The relief Ariba seeks here is akin to a motion for reconsideration—i.e., asking the Court to reconsider construing the "deciding between" limitation with the same corresponding structure as the "order generating means." The local rules governing such motions are instructive here. They require a party to first seek leave to file such a motion, and further require the party to show either that "a material difference in fact or law exists from that which was presented to the Court before entry of the interlocutory order" and which the moving party was unaware of, or that "emergence of new material facts or a change of law occur[ed] after the time of such order," or that there was a "manifest failure by the Court to consider material facts or dispositive legal arguments which were presented to the Court before such interlocutory order." Civ. L.R. 7-9(b). Ariba cannot show that any of those conditions apply because there are no new facts nor a change in case law. Indeed, Ariba relies on six cases that were all decided long before the claim construction stage of this case, and has failed to offer any reason for why it did not present these

¹ 35 U.S.C. § 112, ¶ 6 is now 35 U.S.C. § 112(f) and shall be referred to here as such.

1 earlier. Neither does Ariba argue there was any manifest failure by the Court to consider material
2 facts or dispositive legal arguments, nor could it since the argument Ariba makes is new.

3 Accordingly, Ariba's Administrative Motion For Leave To File A Supplemental Brief On
4 Whether § 112(f) Applies To "Deciding Between" should be denied. To the extent the Court
5 grants Ariba leave to file its supplemental brief, Coupa respectfully requests leave to file a
6 responsive brief, attached as Exhibit A to the Declaration of Bryan A. Blumenkopf, that addresses
7 Ariba's new arguments and newly cited case law.

8 Dated: September 20, 2013

Respectfully submitted,

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10 By: /s/ Bryan A. Blumenkopf
Bryan A. Blumenkopf

11 Attorney for Defendant
12 COUPA SOFTWARE INC.

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